

USDC SCAN INDEX SHEET



PRICE

COUNTY OF SAN DIEGO

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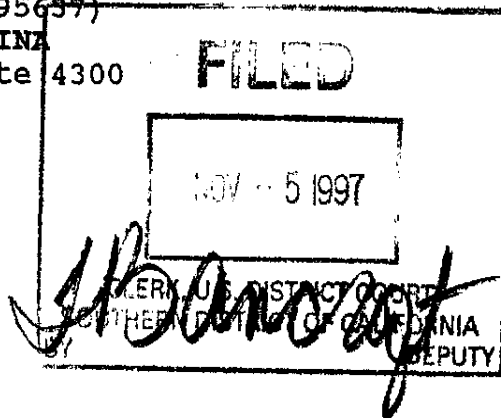
3:94-CV-01917

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DECL.

CHARLES R. WOODS, ESQ. (SB#95637)
TROST, STREET, WOODS & MESSINA
1202 Kettner Boulevard, Suite 4300
San Diego, California 92101
(619) 233-7633

Attorneys for Plaintiffs



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

ANN PRICE, an individual;	)	CASE NO. 94-1917R (AJB)
ANN PRICE, as Guardian ad)	
Litem of BENJAMIN PRICE, a	)	DIRECT EXAM/TRIAL
Minor and UNBORN BABY PRICE,	)	DECLARATION OF PLAINTIFFS'
a Minor in Utero; ROBERT	)	EXPERT PATHOLOGIST, DONALD T.
PRICE; MARGARET PRICE and the	)	REAY, M.D.
Estate of DANIEL L. PRICE,)	
deceased, through its)	
Administrator, ANN PRICE,)	
	)	TRIAL DATE: <u>11-12</u> July 29 , 1997
Plaintiffs,	)	TIME : 9:00 a.m.
	)	COURTROOM : 5
v.	)	JUDGE :
	)	HONORABLE JOHN S. RHOADES
COUNTY OF SAN DIEGO;)	
JOHN GROFF; STEVEN CLAUSE;)	
MARK TALLEY; JIM ROACHE;)	
SAM SHEPARD; and DOES I)	
through 50, inclusive,)	
)	
Defendants.)	

I, DONALD T. REAY, M.D., declare and if called as a witness
would competently testify to the following from my own personal
knowledge:

1. That I am plaintiffs' retained expert witness in the area
of anatomic, clinical and forensic pathology in the above-captioned
case.
2. That I am the Chief Medical Examiner for King County,

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ORIGINAL

1 Seattle, Washington. My Curriculum Vitae is attached hereto as
2 Exhibit 1 and incorporated by this reference.

3 3. That since 1982 I have been evaluating deaths involving
4 police restraint techniques and the phenomenon known as positional
5 asphyxia. My studies have been primarily concerned with the
6 sometimes fatal interplay of persons restrained by various police
7 restraint techniques. I have also read the autopsy report on DAN
8 PRICE, conducted by John W. Eisele, M.D., deputy Medical Examiner
9 of San Diego. I have also read the hospital records on Mr. PRICE,
10 after he was transported from the scene of the hogtying and
11 restraint, to Pomerado Hospital.

12 4. I have read the deposition testimony of Dr. Tom Neuman,
13 the pulmonary medicine expert designated by the defendants in this
14 action. Further, I have read Dr. Neuman's study entitled
15 "Restraint Position and Positional Asphyxia". I note that, to my
16 knowledge, said study has not been published in any medical
17 journal.

18 5. The primary focus of my study was not the measurement of
19 oxygen levels following exertion, but rather the impact on a
20 restrained person's ability to breathe and replenish oxygen levels
21 when restrained. The fact that I used a pulse oximeter in my
22 studies as opposed to drawing arterial blood gas and whether my
23 concept of oxygen levels being decreased or increased following
24 exertion, was not of crucial importance. The fact remains that
25 regardless of whether oxygen levels increase following exertion
26 that condition presupposes that the lungs are able to replenish the
27 oxygen in a person's system. That is why a person who is winded
28 after a long sprint or run, is often times gasping for air -

1 because that person has increased oxygen needs. When a person is
2 sat upon by a 270 lb. deputy or a 225 lb. deputy presses his knee
3 into the small of the back of a restrained person, (as was the case
4 with DAN PRICE) common sense and sound medical science tells us
5 that that person will have difficulty breathing and, hence, because
6 of the diminished "bellows-action" of the lungs (because of the
7 external pressure), will be unable to meet the oxygen demands of
8 that person's system. In this scenario, a person's oxygen levels
9 are, in fact, decreased because the lungs cannot fill up with air.

10 6. I am not the only physician or scientist in the country
11 that have made the same conclusions that I have made. I have kept
12 in touch with colleagues who have done similar studies throughout
13 the country and I have read such studies.

14 Dr. Harold MacDannald, a pulmonologist in Northern California,
15 has contacted me recently and tells me that his study, from the
16 pulmonology viewpoint, confirms my studies and conclusions. I have
17 read Dr. MacDannald's study, and it does confirm my studies.

18 7. I have written the following articles and studies:
19 "Effects of Positional Restraint on Oxygen Saturation and Heart
20 Rate Following Exercise" and "Positional Asphyxia During Law
21 Enforcement Transport". All of my articles herein have been
22 published and subjected to peer review, (unlike the UCSD study).
23 I have read other studies, such as: "Restraint Asphyxiation in
24 Excited Delirium" by Drs. R. L. O'Halloran and L.V. Lewman and
25 Letters to Editor re: Restraint Asphyxiation by Charles S. Hirsch,
26 M.D., other pathologists and medical examiners, across the country,
27 who have made the same findings as I have, i.e. that maximum
28 restraints, particularly so-called hogtie restraints do, in fact,

1 lead to positional asphyxia.

2 8. Additionally, these studies also stress the point that
3 even if not hogtied, that a person who is left prone, (on their
4 belly), are susceptible to positional asphyxia, especially when
5 those persons have endured a high energy struggle with police, are
6 under the influence of drugs, are mentally ill, have had discharge
7 of catecholamines in their system and are subject to external chest
8 restriction.

9 9. I note also, that Dr. Neuman's studies do not accurately
10 recreate the facts of Dan Price's death, the cause of which was, in
11 my opinion, accurately diagnosed by the San Diego Medical Examiner,
12 John Eisele, M.D., as death by "Hypoxic Encephalopathy, due to
13 "Restrictive Asphyxia with Cardio-Pulmonary Arrest, due to Maximum
14 Restraint in Prone Position by Law Enforcement." I note that Dr.
15 Neuman's test subjects were young men of different builds and body
16 fat content from Dan Price; that none of the subjects were
17 subjected to outside pressures on their back, i.e. from deputies or
18 persons similar to the deputies involved in the Price case
19 including 270 lb. Deputy Groff and 225 lb. Deputy Talley, both of
20 whom applied pressure to Mr. Price's back, while he was hogtied and
21 earlier, prior to his death; none of the subjects were pressed upon
22 134 degree asphalt street paving which would create stress factors
23 in any detained person, because of the intense heat being
24 generated; none of the test subjects had small non-lethal amounts
25 of methamphetamine in their system; none were experiencing
26 emotional and psychological problems; none had just undergone a
27 violent struggle resulting in facial wounds and deep wrist and
28 ankle abrasions from the manacles used, and none had been "pepper

1 sprayed" two or three times prior to the hogtying.

2 10. Therefore, I can say certainly that the UCSD study
3 conducted by Dr. Neuman and his colleagues does not recreate the
4 instances of Dan Price's death. My medical opinion remains
5 unchanged but enlightened by the defendants' study, which I note,
6 was bought and paid for many years after I conducted my independent
7 studies and four years after San Diego Police Department and many
8 other police agencies had accepted my theories and banned hogtying,
9 and nearly two years after the death of Dan Price and the filing of
10 the wrongful death action on behalf of Dan Price, by his family.
11 Further, I am aware that by August 1994, the San Diego County
12 Sheriff Department less than two months after DAN PRICE's death,
13 [but two years after the San Diego Police Department Final Report
14 of the Custody Death Task Force Report, which was based in part
15 upon my studies, resulted in hogtie banning by San Diego Police
16 Department and other agencies], finally informed its deputies in a
17 Training Bulletin, of the dangers of hogtying and positional
18 asphyxia.

19 11. Dr. Neuman and the UCSD study does not refute or negate
20 the basic concept of positional asphyxia. It merely postulates
21 that hogtying healthy, voluntarily exercised people doesn't cause
22 pulmonary restriction significant enough (only 13% deficit) to kill
23 them. DAN PRICE and the instances of his death, bear little
24 similarity to Dr. Neuman's subjects or study.

25 12. In preparing my opinions in this case, I have reviewed
26 the San Diego Medical Examiner's investigative report and autopsy
27 report; photos of Dan Price; deposition of Dr. John W. Eisele;
28 depositions of sheriff deputies John Groff, Steven Clause, Samuel

1 Sheppard and Mark Talley; interviews by San Diego sheriffs of the
2 four deputies (Groff, Clause, Sheppard and Talley); statements of
3 witnesses including Amber and Heather Creighton, Sandi Bias, Gene
4 Syrios, Tim Thomas, Jeff Alan Butler, National Weather Service
5 Information regarding the temperature on the date of this incident
6 and Poway Fire Department and San Diego Fire Department paramedic
7 records, as well as Dan Price's hospital records for his treatment
8 at Pomerado Hospital for the period of June 28 through June 30,
9 1994.

10 13. Based on my review of this material and all my studies
11 and experience as a pathologist, particularly with respect to my
12 studies of the phenomenon known as positional and restrictive
13 asphyxia, I am of the opinion, to a reasonable medical certainty,
14 that Dan Price died as a result of the restraint maneuver which
15 included restriction of his breathing with his face down in a prone
16 position. Chronologically, the hogtie restriction came first, then
17 the cardiac pulmonary arrest occurred causing the hypoxic
18 encephalopathy, as properly assessed by Dr. John W. Eisele. The
19 asphyxiation is the process which was set in motion by the hogtie
20 maneuver and the compression, which did not allow for an effective
21 exchange of oxygen to occur for Mr. Price. Further, I am of the
22 opinion, to a reasonable medical certainty, that methamphetamine
23 did not cause Dan Price's death. A review of the autopsy records
24 indicates to me that Dan Price did not have the large heart vessel
25 damage usually associated with arteriosclerosis. Further, I am of
26 the opinion to a reasonable medical certainty that Dan Price would
27 not have experienced a cardiac event had he not been hogtied and
28 would still be alive today had he not been hogtied by

1 the sheriff deputies in this case. Although hogtying is inherently
2 neutral, in some situations, as it was applied to Dan Price, based
3 on my review of the history and the records, it can and will be
4 fatal, as it was to Dan Price. Physiologically, hogtying causes a
5 person to lie face down (if left to do so) which causes the
6 abdominal contents to be pushed up against the diaphragm. If there
7 is then some weight placed upon the back of the individual and that
8 individual is unable to move his chest, coupled with muscle
9 fatigue, effectiveness of that person's breathing in a face down
10 prone position becomes more labored and can be fatal, as it was to
11 Dan Price.

12 I declare under penalty of perjury pursuant to the laws of the
13 United States of America that the foregoing is true and correct.

14 Executed this 7 day of June, 1997.

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16 
17 DONALD T. REAY, M.D.
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EXHIBIT 1

CURRICULUM VITAE

PERSONAL:

Donald T. Reay	Date of Birth:	14 May 1937
10800 12th N.W.	Place of Birth:	Rock Springs, WY
Seattle, WA	Married: Judith	Children: 4

EDUCATION:

Undergraduate:	University of Notre Dame South Bend, Indiana	Bachelor of Science 1955-1959
Medical Education:	University of Utah Salt Lake City, Utah	Doctor of Medicine 1959-1963
Internship:	University of Utah Salt Lake City, Utah	Med-Path Intern 1963-1964
Residency:	University of Utah & Holy Cross Hospital Salt Lake City, Utah	AP-CP Resident 1964-1967
Fellowship:	Cleveland Clinic Cleveland, Ohio	Forensic Pathology 1967-1968
Graduate:	Seattle University Seattle, Washington	Masters in Public Administration 1978

BOARD CERTIFICATION:

Anatomic and Clinical Pathology:	May 1969
Forensic Pathology:	May 1970

LICENSE TO PRACTICE:

Washington 1973

Previous Licensure: Utah, Wyoming

EX-1 DATE 4-26-96
WITNESS Reay
ALL CHRISTY

Donald T. Reay, M.D.

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MILITARY SERVICE:

Active Duty USAF	Lt. Col.	1968 to 1973
USA Reserve (Retired)	Colonel	1980 to 1995
Active Duty USA		
11 Jan 91 to 12 Apr 91		Madigan Army Medical Center
Operation Desert Storm		

MEMBERSHIP IN MEDICAL AND SCIENTIFIC SOCIETIES:

American Society of Clinical Pathology (Fellow)
 American Academy of Forensic Science (Fellow)
 Washington Society of Pathologists
 National Association of Medical Examiners
 Pacific Northwest Society of Pathologists
 King County Medical Society
 Washington State Medical Association
 American Medical Association
 Canadian Society of Forensic Sciences
 College of American Pathology (Fellow)
 American Association of Military Surgeons
 International Wound Ballistics Association

OFFICES IN MEDICAL/SCIENTIFIC SOCIETIES:

Armed Forces Institute of Pathology:	
Scientific Advisory Board:	15 Nov 94-96
Association of Military Surgeons of the United States:	
Editorial Board	Appointed 1991
Journal of Forensic Sciences: Editorial Board	Appointed 1990
National Association of Medical Examiners:	
a) President	(1987-1988)
b) Chairman, Board of Directors	(1988-1989)
c) Board of Directors & Executive Committee	(1981-1989)
d) Pro-Tem Secretary Treasurer	(1988-1989)
Washington State Society of Pathologists:	Past President
	(1981-1983)
American Board of Pathology:	
Forensic Test Committee	(1981-1986)

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Washington State Medical Association: Interspecialty Committee Past Member

American Journal of Forensic Medicine & Pathology:
Editorial Board (1980-1989)

American Society of Clinical Pathologists:
Forensic Council - Continuing Medical Education Committee
(1984 to 1990)

American Society of Clinical Pathologists:
Committee - In-service Examination for AP Residents
(1984)

COMMITTEE AND PUBLIC POLICY BOARDS:

Governor's Forensic Investigation Council, January 1984, Chairman - 1986 to present

Forensic Committee, College of American Pathologists 1989 - Present

Member - Panel selected to review Maga autopsy in the Singapore - Philippine controversy, 1995

DNA Fingerprinting Technical Advisory Committee Chairman, King County, 1988

DNA Identification Oversight Committee, (Appointed by Governor), 1989

King County Executive's Committee to study use of force in detention facilities
December 1983

Mayor's Committee on drunk drivers - August 1983 - 1984

Corrections Standard Board Advisor, Olympia, Washington - 1981

Washington State Medical Association Committee on drunk driving - 1983

Executive Committee, King County Medical Society - Anti-Drinking and Driving
Committee - 1985

Recombinant DNA Committee, University of Washington - 1985 - 1986

Serial Murder Multi-Agency Investigation Team Project - Texas Criminal Justice
Center - Sam Houston State University 1986

Executive Committee, Harborview Injury Prevention Center June 1986 to present

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MAJOR POSITIONS:

Chief Medical Examiner King County, Seattle, Washington	1 Nov 1975 to present
Deputy Chief Medical Examiner King County, Seattle, Washington	17 Dec 1973 to 1 Nov 1975
Chief, Department of Pathology USAF Academy USAF Academy Hospital	15 Jul 1972 to 15 Dec 1973
Senior Specialist in Histopathology RAF Halton RAF Institute of Pathology and Bucks, Eng. Tropical Medicine	15 Jul 1970 to Jul 1972
Chief, Accident Pathology Branch Armed Forces Institute of Pathology, Wash, DC and Registrar, Registry of Accident Pathology	Aug 1968 to 15 Jul 1970

ACADEMIC - RESEARCH - OTHER POSITIONS:

Professor of Pathology, University of Washington, Seattle, Washington	1 Jul 1991 to present
Associate Professor of Pathology, University of Washington, Seattle, Washington	1 Jul 1983 to present
Assistant Professor of Pathology, University of Washington, Seattle, Washington	1 Mar 1974 to 1 Jan 1983
Clinical Faculty, School of Health Sciences of Seattle Pacific University, Seattle, Washington	1 Jun 1979 to 1 Jun 1980
Course Director, Annual Death Investigation Seminar University of Washington, Seattle, Washington	Biennial
Police Instructor, Police Standards Council, Sitka, Alaska	May 1978 to May 1982
Instructor, Criminal Justice Training Commission, State of Washington	1978 to present
Instructor, Washington State Patrol Academy, Shelton, Washington	1980 to present

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Lecturer in Forensic Medicine, USAF Academy
Colorado

Jul 1972 to
Dec 1973

AFIP Consultant, National Highway Safety Bureau
Dept. of Transportation, Washington, DC
Universities Associated for Research Scientist
and Education in Pathology, AFIP Associate

Oct 1970 to
5 Jul 1973
1 Jan 1969 to
15 Jul 1970

Skylab Medical Recovery Team, Missions III & IV,
NASA-USAF

1972 - 1973

Member, NATO Committee on Traffic Safety
Wolfsberg, Germany

Sep 1968

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PUBLICATIONS:

Reay, D.T., Weissman, N., and Carnes, W.H.: Effects of elastase digestion and formic acid extraction on aortas from copper-deficient pigs, Fed. Proc. 22:161, 1963

Weisman, N., Reay, D.T., Coulson, W.F. and Carnes, W.H.: Elastin content of aorta determined by elastase digestion and formic acid extraction, Lab. Invest. 14:372, 1965

Adelson, L., Huntington, R.W., and Reay, D.T.: "A Prisoner is Dead". Police 13:49, 1968

Reay, D.T., and Modic, J.L.: Splenic rupture in childhood infectious mononucleosis, Ohio St. Med. J. 65:388, 1969

Reay, D.T.: The time of death, Military Police Journal 19:11, 1969

Reay, D.T.: Case for diagnosis (traumatic pneumocephalus) Milit. Med. 134:359, 1969

Reay, D.T. and Hazelwood, R.: Death in military police custody and confinement, Milit. Med. 135:342, 1970

Reay, D.T.: Syllabus on accident pathology with 100 slides, 30 pp. Published by American Registry of Pathology, July 1970

Reay, D.T.: Accident Pathology, USAF Med. Serv. Dig. 21:15, Nov 1970

Reay, D.T.: USAF/RAF Exchange Program for Pathologists. USAF Med. Serv. Dig. 22:34, June 1971

Reay, D.T.: Current methods in automobile accident pathology. Int. Acad. of Path. Bull., Spring Edition: 10, 1972

Reay, D.T.: Policies, procedures and structure. January 1977: Deaths under the jurisdiction of the Medical Examiner. February 1977: Natural death and the Medical Examiner. March 1977: When a Medical Examiner's autopsy is performed. April 1977: Release of autopsy examination. May 1977: The Medical Examiner and deaths in the emergency room. July 1977: Violent death in King County 1979: November 1980; Bulletin of King County Medical Society

Reay, D.T.: "The development of rational medicolegal death investigation in the United States: An Historical Perspective"? (Unpublished Master's Thesis, Seattle University, 1978)

Reay, D.T.: The investigation of sudden and violent death, University of Washington Medicine, Vol. 5, No. 4:3-10, Winter 1978

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Haglund, W.D. & Reay, D.T.: Use of Facial Approximation Techniques in Identification of Green River Serial Murder Victims. Am. J. For. Med. & Path., 12(2): 132-142, 1991.

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Luke, J.L. & Reay, D.T.: The Perils of Investigating and Certifying Deaths in Police Custody. Am. J. For. Med. & Path., 13(2):98-100, 1992.

Kellermann, M.D., Rivara, F.P., Somes, G., Reay, D.T., Francisco, J., Banton, J.G., Prodzinski, Fligner, C.L., & Hackman, B.B.: Suicide in the Home in Relation to Gun Ownership. NEJM, 327(7):467-472, 1992.

Michaud, M.D., Rivara, F.P., Grady, M.S., & Reay, D.T.: Predictors of Survival and Severity of Disability after Severe Brain Injury in Children. Neurosurgery, Vol 31, No 2., August, 1992

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